

B Rhino (Pty) Ltd

HORN Licence Terms

V1.0



B Rhino (Pty) Ltd Terms and Conditions

1. Definitions:

1.1. In these terms and conditions, the following expressions shall have the following meanings:

1.1.1. "Agreement" means this agreement between the End User and BckRhino;



- 1.1.2. "BlckRhino" means B Rhino (Pty) Ltd, a private company, with Registration Number 2019/473091/07, registered in terms of the laws of the Republic of South Africa, having its principle place of business at 94 Sir David Baird Drive, Bloubergstrand, Western Cape, 7441, and email address: legal@blckrhino.com;
- 1.1.3. "Authorised Users" means those employees, agents and independent contractors of the End User who are authorised by the End User to use the Services;
- 1.1.4. "Business Day" means any day of the week, excluding Saturdays, Sundays and official public holidays in the Republic of South Africa;
- 1.1.5. "Channel Partner" means any authorised reseller of the Services.
- 1.1.6. "Confidential Information" shall mean any information received by one Party from the other Party and is marked as confidential or a similar notice (if disclosed in writing or a tangible form), identified as confidential (if disclosed verbally) or should reasonably be treated as confidential under the context in which such disclosure was made;
- 1.1.6.1. Confidential Information shall not include information that the Party receiving the information can demonstrate:
- 1.1.6.1.1. is lawfully in the public domain at the time of disclosure thereof;
 - 1.1.6.1.2. subsequently becomes lawfully part of the public domain by publication or otherwise; and
 - 1.1.6.1.3. is or becomes available to the Party receiving such information from a source other than the Party revealing the information, which source was lawfully entitled without any restriction on disclosure to disclose such information to a third party.
- 1.1.6.2. The Party receiving the Confidential Information will:
- 1.1.6.2.1. safeguard Confidential Information with the same degree of care as it exercises with its own Confidential Information, but no less than reasonable care;
 - 1.1.6.2.2. not disclose any Confidential Information to third parties; and
 - 1.1.6.2.3. will use the other Party's Confidential Information solely in the exercise of the rights and obligations under these Terms and Conditions and for no other purpose.



- 1.1.6.3. The Party so receiving the Confidential Information may disclose same only pursuant to a requirement or request by operation of law, regulation or court order, but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed;
- 1.1.7. "End User" means the customer purchasing the Services from BlckRhino, either directly or via a Channel Partner;
- 1.1.8. "End User Data" means the data inputted by the End User, or by its Authorised Users, the Channel Partner or BlckRhino on the End User's behalf for the purpose of using the Services or facilitating the End User's use of the Services;
- 1.1.9. "Documentation" means any documents made available to the End User by or on behalf of BlckRhino which sets out a description of the Services and the user instructions for the Services;
- 1.1.10. "Effective Date" means shall be the date on which the End User's account is marked active within the BlckRhino environment;
- 1.1.11. "Initial Term" means the period during which the Services will be provided as specified in the Order;
- 1.1.12. "Order" means The End User's order for the Services on the BlckRhino website; BlckRhino Platform; or as per a signed proposal form or otherwise submitted by a Channel Partner;
- 1.1.13. "Platform" means The online software application, provided by BlckRhino as part of the Services also called the Software;
- 1.1.14. "Services" mean the subscription services provided by BlckRhino to the End User under the Agreement, as more particularly described in the Documentation;
- 1.1.15. "Software" means the software applications provided by BlckRhino as part of the Services;
- 1.1.16. "Subscription" means the HORN software application as a service (SaaS) subscribed for by each End User.
- 1.1.17. "Subscription Fees" means the subscription fees payable by the End User to BlckRhino or to a Channel Partner, as set out in the Order.
- 1.1.18. "Term" means the renewal, after the Initial Term period during which the Services will be provided, as specified in the Order.
- 1.2. The rule of construction in terms of which an agreement shall be interpreted against the party responsible for its drafting shall not apply.
- 1.3. The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.



- 1.4. Where an expression has been defined, whether in clause 1 above, or elsewhere, and such definition contains a provision conferring a right or imposing an obligation on any Party, then, notwithstanding that it is contained only in a definition, effect shall be given to that provision as if it were a substantive provision contained in the body of the Agreement.
- 1.5. Expiration or termination shall not affect such of the provisions of this Agreement which of necessity must continue to have effect after such expiration or termination, notwithstanding that such provision may not expressly provide

2. Subscriptions

- 2.1. Subject to the payment as per the Order of the relevant Subscription Fees, BlickRhino hereby grants to the End User a non-exclusive, non-transferable right to use the Software and the Services during the Term solely for the End User's internal business operations unless reduced to writing and agreed to by both parties through the execution of an agreement governing the use of the software for or within other entities.
 - 2.2. The End User shall not:
 - 2.2.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties: and except to the extent expressly permitted under the Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - 2.2.2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
 - 2.2.3. access all or any part of the Services in order to build a product or service which competes with the Services and/or the Documentation; or
 - 2.2.4. except with BlickRhino's prior written consent, use the Services to provide services to third parties; or
 - 2.2.5. subject to the provisions of this Agreement that provide the contrary, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
 - 2.2.6. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2;
 - 2.3. The End User shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify BlickRhino.
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2.4. The rights provided under this clause 2 are granted to the End User only, and shall not be considered granted to any subsidiary or holding company of the End User.

2.5. Subject to BlckRhino giving the End User 5 (five) Business Days' written notice, BlckRhino shall be entitled to suspend the End User's use of the Services and Software should the End User fail to make payment of the Subscription Fees on the due date, until such time as the Subscription Fees have been paid in full. Specifically, BlckRhino has the right to disable, remove, or otherwise render useless the Services and Software deployed to systems if the situation remains unresolved after the notice period mentioned in this point..

3. Services

3.1. BlckRhino shall, during the Term, provide the Services to the End User on and subject to the terms of the Agreement.

3.2. BlckRhino shall use its reasonable efforts to ensure that any maintenance activity which may interrupt access to the Services, shall not be performed during "Normal Business Hours" (9.00 am to 5.00 pm GMT+2, Monday to Friday, excluding public holidays). The End User acknowledges that BlckRhino may interrupt access to the Services at any time to perform essential emergency maintenance.

4. End-User Data

4.1. The End User shall own all right, title and interests in and to all of the End User Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the End User Data.

4.2. If BlckRhino processes any personal data on the End User's behalf when performing its obligations under the Agreement, the parties record their intention that the End User shall be the responsible party/data controller and BlckRhino shall be a data operator/ processor and in any such case:

4.2.1. the End User specifically acknowledges and agrees that where necessary the personal data will be hosted on cloud platforms, including but not limited to, Microsoft Azure, Vultr, and/or Amazon Web Services, and transferred or stored outside the country where the End User and the Authorised Users are located in order to carry out the Services and BlckRhino's other obligations under the Agreement;



- 4.2.2. the End User shall ensure that it is entitled to transfer the relevant personal data to BlickRhino so that BlickRhino may lawfully use, process and transfer the personal data in accordance with the Agreement on the End User's behalf;
 - 4.2.3. the End User shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; and
 - 4.2.4. each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.
- 4.3. The End User acknowledges that and consents to BlickRhino generating, collecting, and using anonymised aggregate data relating to its End Users' use of the Services.

5. BlickRhino's Obligations

- 5.1. BlickRhino undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care to be expected of a service provider in the industry.
- 5.2. If the Services do not conform with the foregoing undertaking, BlickRhino will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the End User with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the End User's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1.
- 5.3. BlickRhino warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement.

6. End User's Obligations

- 6.1. The End User shall be solely responsible for:
 - 6.1.1. the monitoring or outsourced monitoring of all logs or alerts generated by the Software in connection with the Services
 - 6.1.2. the installation of the licenced Software on its endpoints
 - 6.1.3. procuring and maintaining its network connections and telecommunications links from its systems to the Platform, and all problems, conditions, delays,



delivery failures and all other loss or damage arising from or relating to the End User's network connections or telecommunications links or caused by the internet,

and the End User shall:

- 6.1.4. comply with all applicable laws and regulations with respect to its activities under the Agreement;
 - 6.1.5. carry out all other End User responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in the End User's provision of such assistance as agreed by the parties, BlickRhino may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - 6.1.6. ensure that the Authorised Users use the Services in accordance with the terms and conditions of the Agreement and shall be responsible for any Authorised User's breach of the Agreement;
 - 6.1.7. obtain and shall maintain all necessary licences, consents, and permissions necessary for BlickRhino, its contractors and agents to perform their obligations under the Agreement, including the Services;
 - 6.1.8. ensure that its network and systems comply with the relevant specifications provided by BlickRhino from time to time;
 - 6.1.9. ensure that all fees for the use of the Services are paid timeously;
- and the End User shall provide BlickRhino with
- 6.1.10. all necessary cooperation in relation to the Agreement;
 - 6.1.11. all necessary access to such information as may be required by BlickRhino, including End User Data, log data, alert data, security access information and configuration services where required to provide the Services .

7. Proprietary Rights

- 7.1. The End User acknowledges and agrees that BlickRhino and/or its licensors own all intellectual property rights in the Platform, Services and the Documentation.
- 7.2. Except as expressly stated herein, the Agreement does not grant the End User any rights to, or in, patents, copyright, database right, trade secrets, trade

names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Platform, Services or the Documentation. **8. Confidentiality**

- 8.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement. A party's Confidential Information shall exclude information that:



- 8.1.1. is or becomes publicly known other than through any act or omission of the receiving party or connected parties;
 - 8.1.2. was in the receiving party's lawful possession before the disclosure;
 - 8.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 8.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 8.1.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 8.2. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Agreement.
- 8.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.
- 8.4. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 8.5. The End User acknowledges that details of the Services, and the results of any performance tests of the Services, constitute BlckRhino's Confidential Information.
- 8.6. BlckRhino acknowledges and agrees that the End User Data is the Confidential Information of the End User.
- 8.7. No party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.
- 8.8. This clause 8 is severable from the rest of this Agreement and shall remain in full force and effect notwithstanding any termination or cancellation of this Agreement, or any part thereof.

9. Suspension

- 9.1. BlckRhino may disabled a Customer's Platform or access for legal or regulatory reasons or as otherwise permitted under this Agreement and BlckRhino will notify the Channel Partner or End User of such within 48 hours. BlckRhino reserves the right to remove any and all parts of the Software that is deployed in relation to the Agreement.



9.2. If BlckRhino disables a Customer's Platform or access due to regulatory reasons, BlckRhino will also suspend billing to the Channel Partner for that Customer's Subscription until the Subscription is re-enabled.

10. Performance Warranty

- 10.1. BlckRhino warrants that the Services and the Software will substantially conform to the specifications and the Documentation.
- 10.2. BlckRhino does not warrant that the End User's use of the Platform, Services and Documentation will be uninterrupted or free from minor defects or errors that do not materially affect such performance; or that the Services, Documentation and/or the information obtained by the End User through the Services will meet the End User's requirements.
- 10.3. BlckRhino is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the End User acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 10.4. Provided End User notifies BlckRhino in writing with a specific description of the Software's nonconformance and BlckRhino validates the existence of such nonconformance, BlckRhino will repair or replace the non-conforming Software. This is End User's sole and exclusive remedy under this warranty. End User's written notification of any nonconformance must include sufficient detail for BlckRhino to analyse the alleged non-conformance. End-User must provide commercially reasonable assistance to BlckRhino in analysing and remediating any nonconformance of the Software.
- 10.5. The warranty does not apply:
 - 10.5.1. if the Services have not been used as provided for in this Agreement or the Software is not used in accordance with the Documentation; or
 - 10.5.2. to any End User unlicensed activities.
- 10.6. Express Disclaimer: BlckRhino and its licensors disclaim all other representations, warranties, conditions or guarantees with respect to the software express or implied, including without limitation, any implied warranties of merchantability, quality or fitness for a particular purpose except to the extent that any warranties implied by law cannot be validly waived.

11. Third-Party Claims - INFRINGEMENT AND DEFENCE OF END-USER

- 11.1. BlckRhino will, at its sole discretion, either defend the End User against or settle any claim brought against End User if such claim is brought by any owner of the Intellectual Property giving rise to the claim and alleges that End User's use of the Software, in accordance with the terms and conditions of this Agreement, constitutes a direct infringement or misappropriation of such owner's patent claim(s), copyright, trademark or trade secret right.
- 11.2. BlckRhino may pay damages finally awarded against End User (or the amount of any settlement BlckRhino enters into) with respect to such claims. Provided that:
 - 11.2.1. BlckRhino is given prompt notice of any such claim;
 - 11.2.2. the End User provides reasonable cooperation to BlckRhino in the defence and settlement of such claim, at BlckRhino's expense; and
 - 11.2.3. BlckRhino is given sole authority to defend or settle the claim.
- 11.3. In the defence or settlement of any claim, BlckRhino may procure the right for the End User to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Agreement immediately without any additional liability or obligation to pay liquidated damages or other additional costs to the End User.
- 11.4. In no event shall BlckRhino, its employees, agents and subcontractors be liable to the End User to the extent that the alleged infringement is based on:
 - 11.4.1. A modification of the Services or Documentation by anyone other than BlckRhino; or
 - 11.4.2. the End User's use of the Services or Documentation in a manner contrary to the instructions given to the End User by BlckRhino; or
 - 11.4.3. the End User's use of the Services or Documentation after notice of the alleged or actual infringement from BlckRhino or any appropriate authority.
 - 11.4.4. The foregoing states the End User's sole and exclusive rights and remedies, and BlckRhino's (including BlckRhino's employees', agents' and subcontractors) entire obligations and liability, for infringement of the intellectual property right or right of confidentiality.

12. Third-Party Claims - INDEMNITY BY THE END USER IN RESPECT OF THEIR USE OF THE SERVICES

- 12.1. Subject to clause 11 above, the End User shall defend, indemnify and hold harmless BlckRhino against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with the End User's use of the Services and/or Documentation, provided that:
 - 12.1.1. the End User is given prompt notice of any such claim;
 - 12.1.2. BlckRhino provides reasonable cooperation to the End User in the defence and settlement of such claim, at the End User's expense; and

12.1.3. The End User is given sole authority to defend or settle the claim.

13. Limitation of Liability

13.1. BlckRhino shall have no liability under this Agreement and/or the End User's use of the Software and Services in the event that:

13.1.1. the Software is not used in accordance with the Documentation; or

13.1.2. the defect or liability is caused by End User or Channel Partner or anyone other than BlckRhino; or

13.1.3. the Services and Software are used in conjunction with any third-party software for which the End User lacks sufficient rights from the third-party vendor for such use; or

13.1.4. for any End User activities not permitted under this Agreement.

13.2. Under no circumstances and regardless of the nature of any claim will BlckRhino, its licensors or end-user be liable to each other or any other person or entity for in any amount for special, incidental, consequential, or indirect damages, loss of goodwill or profits, work stoppage, data loss, computer failure or malfunction, attorneys' fees, court costs, interest or exemplary or punitive damages.

13.3. Subject to clauses 13.1 and 13.2 above, but notwithstanding any other provision of this Agreement, BlckRhino's maximum aggregate liability to the End User whether in contract, delict (including negligence), breach of statutory duty or otherwise, arising under or in connection with this Agreement, shall be limited to the lower of:

13.3.1. a sum equal to the total Fees paid to BlckRhino under this Agreement in a twelve-month period; or

13.3.2. that proportion of the loss or damage (including interest and costs) suffered by the Client, which is ascribed to BlckRhino by a Court of competent jurisdiction or Arbitrator allocating a proportionate responsibility to the Client having regard to the contribution to the loss or damage in question by the Client or any other person based upon relative degrees of fault; it being a term of this Agreement that the provisions of Section 1 of the Apportionment of Damages Act, 1956 will apply to all claims between the Parties and "fault" and "loss or damage" as used herein shall respectively be deemed to fall within the meanings of "fault" and "damage" as contained in Section 1 of the Apportionment of Damages Act, 1956.

13.4. For the avoidance of doubt, any reference in this Clause 13 to "arising under or in connection with this Agreement" (or any similar expression) shall include a reference to all Order/s made under or in connection with this Agreement.

14. Agreement Term and Termination

- 14.1. The Initial Term of the Agreement shall commence on the Effective Date and shall continue for the term specified in the applicable Order. This Agreement shall not terminate on the expiry of the Initial Term but shall continue to endure in full force and effect thereafter on a month-to-month basis, subject to the right of either party to terminate the Agreement on one calendar months' notice in writing to the other party.
- 14.2. Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 14.2.1. the other party is in breach of this Agreement and if the breach is capable of remedy, fails to remedy such breach within 14 (fourteen) calendar days of receipt of a notice to do so; and/or
 - 14.2.2. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts; enters into or applies for (or calls meetings of members or creditors with a view to) one or more of a moratorium, winding up, administration, liquidation (of any kind, including provisional), or composition or arrangement with creditors; or has any of its property subjected to one or more of the appointment of a receiver (of any kind), enforcement of security, distress, or execution of a judgment (in each case to include similar events under the laws of other countries).
- 14.3. On termination of the Agreement for any reason:
- 14.3.1. all licences granted under the Agreement shall immediately terminate;
 - 14.3.2. each party shall return and make no further use of any equipment, property, Software, Documentation and other items (and all copies of them) belonging to the other party;
 - 14.3.3. BlckRhino may destroy or otherwise dispose of any of the End User Data in its possession unless BlckRhino receives, no later than ten days after the effective date of the termination of the Agreement, a written request for the delivery to the End User of the then most recent back-up of the End User Data. BlckRhino shall use reasonable commercial endeavours to deliver the back-up to the End User within 30 days of its receipt of such a written request, provided that the End User has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The BlckRhino shall pay all reasonable expenses incurred by BlckRhino in returning or disposing of End User Data; and

- 14.3.4. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 14.3.5. BlckRhino may at its sole discretion remove, uninstall, delete, or use any other mechanism available to remove the deployed Software from systems that it was deployed to in respect of this agreement

15. Force Majeure

- 15.1. BlckRhino shall have no liability to the End User under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of BlckRhino or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, pandemic, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors, provided that the End User is notified of such an event and its expected duration.